IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

M/s Suzlam Construction Co. vs. M/s.Mahesh & Co.

S.B.Civil First Appeal No.4/1986 under Section 96 C.P.C. against the judgment and decree dated 15.7.1985 passed by Shri Fateh Chand Bansal RHJS, Additional District Judge No.3, Jaipur City, Jaipur in Civil Suit No.44/1979.

Date of Judgment :::::: April 15, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr. Sanjay Joshi for appellant.

BY THE COURT (ORAL):-

The plaintiff respondent filed a suit for realisation of Rs.25,203 and 20 paise from the defendant appellant for the goods supplied by it to the defendant appellant. The facts mentioned by the plaintiff in the suit in brief are that the defendant appellant was carrying the business of building construction and used to purchase various

materials from the plaintiff, the payment of the same was to be made within seven days failing which interest @ 18% was to be charged. As pr the case of the plaintiff he supplied goods for the period intervening 7.4.1975 to 31.3.1976, the account of which was annexed to the suit as Schedule `A'. The payment received by the plaintiff from the defendant were shown in Schedule `B'. As per the case of the plaintiff, the defendant purchased goods worth Rs.1,07,529.02 paise against which payment of Rs.91,978.71 paise was made. Therefore, it was the case of the plaintiff that the defendant was liable to pay Rs.15,550. 41 paise along with Rs.9,652.79 paise as interest. Thus, the plaintiff filed the suit for recovery of Rs.25,203.20 paise.

In the written statement, the defendant appellant denied the claim of the plaintiff and came with this case that no goods were purchased in the month of April, 1976 as such the two entries dated 15.4.1976 amounting to Rs.10,124.03 paise and dated 29.4.1976 amounting to Rs.6,125.73 paise were disputed by the defendant. It was also mentioned that Rs.322.33 paise were outstanding towards the plaintiff. The defendant also raised an objection that the suit was not within the limitation and also denied to have any knowledge regarding the plaintiff

firm being a registered partnership firm.

On the basis of the pleadings of the parties, the learned trial court framed as many as 4 issues.

In support of its claim, the plaintiff examined Heeralal as PW.1 while Shri Radhey Shyam was examined as DW.1 from the side of the defendant.

The learned trial court after recording evidence of the parties and hearing both the parties and taking into consideration the evidence and material produced on record, vide impugned judgment and decree dated 15th, July, 1985 decreed the suit of the plaintiff for Rs.25,203.20 paise along with interest @ 18% per annum on the principal amount i.e. Rs.15,550.40 paise from 16.4.1979 till realisation.

Feeling aggrieved of the impugned judgment and decree, the defendant appellant has filed the present appeal.

Heard learned counsel for the appellant.

Learned counsel for the plaintiff appellant contended that the learned trial court has wrongly appreciated the evidence of the parties regarding delivery of goods to the

defendant on 15.4.1976 and 29.4.1976 and on the point of award of interest @ 18% per annum thus, has committed illegality in decreeing the suit of the plaintiff.

After hearing learned counsel for the appellant, I have gone through the impugned judgment and have scanned the material and evidence available on record.

In the back ground of the facts of the case and on the basis of the arguments raised by the learned counsel for the appellant the short controversy involved in the appeal would be as to whether the plaintiff respondent has been able to prove its case regarding delivery of goods on 15.4.1976 and 29.4.1976 and also the the fact that they are entitled to get interest @ 18% per annum on this amount.

Learned trial court has considered this aspect of the case while deciding issue No.2. To prove its case, the plaintiff examined Heera Lal PW.1, General Power Attorney holder of the plaintiff company. In his statement this witness has deposed that plaintiff firm used to supply steel on credit to the defendant. On 15.4.1976 steel was supplied vide bill Ex.3 and on 29.4.1976 supply of steel was made vide bill Ex.4. He has deposed further that the goods were sent through challans and the same were

delivered after obtaining signatures of the person who received the goods. As per statement of this witness challan Ex.5 bears signatures of Gida Ram. Thus, the evidence produced by the plaintiff was to this effect that on 15.4.1976 and 29.4.1976 steel was supplied to the defendant through challans, which was received by Gida Ram. As against this, DW.1 Radheyshyam has stated that no person namely Gidra Ram was working in their company but this witness has admitted this fact that the goods supplied to their company through challans Exs.10 to 15 bear signature of Gida Ram. On the basis of this admitted fact, the learned trial court has concluded that it is well proved fact that person namely Gida Ram was working in the defendant company and he received the goods send to it through challan Exs. 10 to 15 time to time. On this basis the learned trial court has rightly presumed that on 15.4.76 and 29.4.76 goods were sent to defendant and the same were received by Gida Ram. Radhey Shyam DW.1 admitted this fact that staff register was being maintained in the defendant company and that the payment to the employees was made through muster rolls. Had the defendant fair enough, it would have produced both these documents to show that no person namely Gidaram was working with the company. Thus, I find that the learned trial court has committed no error in recording finding to the effect that the plaintiff has been

able to prove that it supplied goods to the defendant on 15.4.76 and 29.4.76.

So far as the dispute regarding payment of interest @ 18% per annum is concerned suffice it to observe that P.W.1 Heera Lal in his statement has categorically stated that if the payment could not be made within seven days, interest @ 18% per annum could be charged. In the bill also, there is clear condition that if the payment is not made within seven days, interest @ 18% per annum would be charged. As against this, the case of the defendant is mere denial. Thus, I am of the view that the finding recorded by the learned trial court on this issue is in accordance with the evidence available on record and does not call for any interference.

No other point has been raised.

For the discussions above, the first appeal filed by the defendant-appellant fails and is, hereby dismissed with no orders as to costs.

(K.C.Sharma),J.

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